

TITLE 16. Board of Optometry

NOTICE IS HEREBY GIVEN that the Board of Optometry is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4090, Sacramento, California, at 10:30 AM, February 7, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Optometry at its office not later than 5:00 p.m. on February 7, 2005, or must be received by the Board of Optometry at the hearing. The Board of Optometry, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 125.9, 148, 3025, 3135, and 3090 of the Business and Professions Code, and to implement, interpret or make specific section 3135 of said Code, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows: Amendment to section 1579, Citable Offenses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. CCR Section 1579 establishes cite and fine authority for violation of laws and regulations specifically identified in that Section. In its current form CCR 1579 must be amended each time there is an applicable law or regulation change. In cases where there is a violation of a law or regulation that is not listed in CCR 1579, the Board does not have authority issue a citation and/or fine. This amendment will eliminate the specificity of the existing language and create categories of violations thus eliminating the need for ongoing amendments in response to future changes in optometry law.

Effective January 1, 2004, B&P Section 125.9 was amended to increase the maximum amount a fine can be assessed from \$2,500 to \$5,000 for all Department of Consumer Affairs boards, bureaus, and programs. Section 125.9 also establishes a \$5,000 maximum for fraudulent billing of Medi-Cal, Medi-Care and insurance companies. This amendment will implement the new cap on fines.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None. The proposed amendments pertain to assessing appropriate fines for violation of the Optometry Practice Act.

Impact on Jobs/New Businesses:

The Board of Optometry has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board of Optometry is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Optometry has determined that the proposed regulations would affect very few small businesses, because there are very few fines assessed. In the past fiscal year, less than 5% of licensees were assessed fines.

CONSIDERATION OF ALTERNATIVES

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Optometry has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Optometry at 400 R Street, Suite 4090, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rex Farmer
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 322-0961
Fax No.: (916) 445-8711
E-Mail Address: rex_farmer@dca.ca.gov

The backup contact person is:

Name: Jane Flint
Address: 400 R Street, Suite 4090
Sacramento, CA 95814
Telephone No.: (916) 323-8720
Fax No.: (916) 445-8711
E-Mail Address: jane_flint@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.optometry.ca.gov.

**PROPOSED AMENDMENTS: CALIFORNIA CODE OF REGULATIONS
SECTION 1579**

Article 12.5. Citations and Fines

1579. Citable Offenses

(a) The executive officer of the board ~~Board~~ shall assess fines for citable, offenses **based on the classifications** listed in this section, provided however, in no case shall the total fines exceed \$2,500 **\$5,000** for each violation **investigation or inspection**. The executive officer shall not impose any duplicate fines for the same violation. ~~B & P refers to the Business and Professions Code~~ ~~CCR refers to the California Code of Regulations.~~

~~The summary description in this section is for the convenience of reference only, does not include the complete text or all required elements of the listed Statute and regulations and shall be disregarded in determining the meaning and effect of this section.~~

~~(a) The minimum and maximum fine for a violation of the following sections of the Business and Professions Code and California Code of Regulations shall be \$50 and \$500, respectively:~~

	<u>B&P</u>	<u>CCR</u>	<u>Summary Descriptions</u>	<u>Range of Fine</u>
(1)	3070	1505	Notification Address	50. - 500.
(2)	3075	1506	Display of Certificate	50. - 500.
(3)	3076		Temporary Practice	50. - 500.
(4)	3098		Misuse of Title or Letters	50. - 500.
(5)	3100		Employment of Cappers/Steerers	50. - 500.
(6)	3125	1513,	False/Assumed Name	50. - 500.

~~1518 & 1546~~

(7)	3162	1549	Corporation Report/Renewals	50. - 500.
(8)	1565		Prescription Standards	50. - 500.
(9)	1566		Notice to Consumers	50. - 500.

~~(b) The minimum and maximum fine for a violation of the following sections of the Business and Professions Code and California Code of Regulations shall be \$501 and \$1000, respectively:~~

	<u>B&P</u>	<u>CCR</u>	<u>Summary Descriptions</u>	<u>Range of Fine</u>
(1)	3077	1507	Branch Offices	501.- 1,000.
			& 1550	
(2)	3129		Advertisement or Furnishing Services Without Cost	501.- 1,000.
(3)	3165	1548	Shares Transfer & Ownership	501.- 1,000.

~~(c) The minimum and maximum fine for a violation of the following sections of the Business and Professions Code and California Code of Regulations shall be \$1,001 - \$2,500, respectively:~~

	<u>B&P</u>	<u>CCR</u>	<u>Summary Descriptions</u>	<u>Range of Fine</u>
(1)	650		Fee for Referral	1,001.- 2,500.

(2)	651	1512	False/Misleading Advertising	1,001.- 2,500
(3)	655		Prohibited Relationships	1,001.- 2,500
(4)	3090		Unprofessional Conduct	1,001.- 2,500
(5)	3096		Solicitation	1,001.- 2,500
(6)	3102		Employment of Suspended/ unlicensed optometrist	1,001.- 2,500
B&P CCR Summary Descriptions Range of Fine				
			Unlicensed Optometrist	1,001.- 2,500
(7)	3103	1514	Accepting Unlawful Employment	1,001.- 2,500
(8)	3104	1515	Improper Advertising	1,001.- 2,500
(9)	3127		Practice Without Certificate	1,001.- 2,500
(10)	3128		Holding Self Out as an Optometrist Without Valid Certificate	1,001.- 2,500

(a) Where citations include an assessment of an administrative fine, they shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

(1) Class "A" violations are violations which the executive officer has determined involve a person who has engaged in the practice of optometry without a license or valid license, including but no limited to, acting in the capacity of an optometrist or performing or controlling the practice of optometry as defined in Business and Professions Code section 3041. A class "A" violation is subject to an administrative fine in an amount not less than fifteen-hundred dollars (\$1,500) and not exceeding twenty-five hundred dollars (\$2,500) for each and every violation.

(2) Class "B" violations are violations which the executive officer has determined that an optometrist has violated a provision of the Optometry Practice Act or a regulation adopted pursuant thereof which has caused financial harm but not physical harm to a person. A class "B" violation is subject to an administrative fine in an amount not less than two-hundred and fifty dollars (\$250) and not exceeding twenty-five hundred dollars (\$2,500) for each and every violation.

(3) Class "C" violations are violation which the executive office has determined involve a person who, while engaged in the practice of optometry, has violated a provision of Chapter 7 (Commencing with section 3000) of Division 2 of the Business and Professions Code or a regulation adopted pursuant thereof and which did not cause harm to another person. A class "C" violation is subject to an administrative fine in an amount not less than two-hundred and fifty dollars (\$250) and not exceeding twenty-five hundred dollars (\$2,500) for each and every violation.

(c) Notwithstanding the administrative fine amounts specified in subsection (b), a citation may include a fine of up to between \$2,501 and \$5,000 if one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate relationship to the health and safety of another person.
2. The cited person has a history of two or more prior citations of the same or similar violations.
3. The citation involves multiple violations that demonstrate a willful disregard of the law.
4. The citation involves a violation or violations perpetrated against a senior citizen or disabled person. B & P refers to the Business and Professions Code.
5. The citation involves fraudulent billing submitted to an insurance company, or Medi-Cal or Medi-Care programs. Such cases do not have to be fully adjudicated in order for the Board to issue a citation.

(d) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148, and 3025, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

HISTORY 1. New section filed 8-17-99; operative 9-16-99 (Register 99, No. 34).